

*scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner. ***" (Emphasis added.)*

{¶6} In making a determination whether a physician employed by both a state university and a practice group acted manifestly outside the scope of his or her employment with the state, this court will use the following two-pronged test:

{¶7} Whether the patient was a "private" patient of the physician or a patient of the university; and

{¶8} The university's financial gain in relation to the physician's financial gain from the care rendered to the patient. *Norman v. Ohio State Univ. Hosps.* (1996), 116 Ohio App.3d 69.

{¶9} On February 3, 2003, William Caldwell (plaintiff) underwent surgery to repair a herniated disc. Plaintiff originally was admitted to Good Samaritan Hospital for pain. (Ringer Deposition, p. 6.) After a diagnosis of a spinal lesion, plaintiff was referred to the neurosurgery service by John Brannan, M.D. (Ringer Deposition, p. 6.) Plaintiff consulted with Dr. Ringer at least three times prior to the surgery. The first consultation occurred at Good Samaritan Hospital and the next two consultations were conducted at Dr. Ringer's office in the Medical Arts Building. (Ringer Deposition, p. 7.) Dr. Ringer performed disc surgery on plaintiff while Dr. Khaled Aziz, a second-year resident, observed the procedure. Dr. Ringer testified that prior to the surgery he met with Dr. Aziz to review films and discuss the operative strategy. (Ringer Deposition, p. 23.) The post-operative visit was conducted at the Medical Arts Building. (Joint Exhibit E.)

{¶10} At all times relevant to this action, Dr. Ringer was employed by defendant, University of Cincinnati (UC), and The Mayfield Clinic, Inc. (Mayfield), a private practice corporation for physicians of defendant's department of Neurosurgery. Dr. Ringer was employed by defendant as an assistant professor.

{¶11}A majority of Dr. Ringer's income was earned through Mayfield. Mayfield also provided his malpractice insurance and other fringe benefits. Additionally, plaintiff was billed by Mayfield for all of Dr. Ringer's services.

{¶12}Whether a state employee is entitled to personal immunity is a question of law. *Nease v. Medical College Hosp.* (1992), 64 Ohio St.3d 396, citing *Conley v. Shearer* (1992), 64 Ohio St.3d 284. While the issue of immunity is a question of law, consideration of the specific facts is necessary. *Nease, supra; Conley, supra.*

{¶13}Based upon the totality of the evidence presented, the court finds that Andrew J. Ringer, M.D., treated plaintiff as a private patient. Accordingly, the court finds that Dr. Ringer is not entitled to civil immunity pursuant to R.C. 2743.02(F) and 9.86, and the courts of common pleas have jurisdiction over any civil actions against him based upon the allegations in this case.

{¶14}This case was submitted to the court upon stipulated exhibits and briefs to determine civil immunity pursuant to R.C. 9.86 and 2743.02(F). Upon hearing all the evidence and for the reasons set forth in the decision filed concurrently herewith, the court finds that Andrew J. Ringer, M.D. is not entitled to immunity pursuant to R.C. 9.86 and 2743.02(F). Therefore, the courts of common pleas have jurisdiction over this matter. Pursuant to Civ.R. 54(B), this court makes the express determination that there is no just reason for delay. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. WARREN BETTIS
Judge

Entry cc:

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